

SUPER LAW GROUP, LLC

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March 15, 2018

Via Certified Mail, Return Receipt Requested

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, D.C. 20044-7415

Re: *Raritan Baykeeper, Inc. (D/B/A NY/NJ Baykeeper) v. Almar Supplies, Inc. et al.*, United States District Court for the Eastern District of New York, Case No. 1:17-cv-5065 (DLI) (PK)

Dear Citizen Suit Coordinator,

Pursuant to 33 U.S.C. § 1365(c)(3) of the Clean Water Act (CWA), counsel for Plaintiff Raritan Baykeeper, Inc. (D/B/A NY/NJ Baykeeper) provides the attached proposed stipulation of settlement between the parties in the above-captioned action resolving violations of the CWA. The parties intend to file a joint motion for entry of the stipulation of settlement with the United States District Court for the Eastern District of New York following the 45-day period for the United States' review of the stipulation of settlement required by 40 C.F.R. §135.5(b).

Plaintiff alleged in this lawsuit that Defendants were violating sections 301(a), and 402(p)(2)(B) of the Clean Water Act by discharging polluted stormwater from their transportation facility, to a water of the United States, the Jamaica Bay in New York City, and that they were doing so without a permit. In settling the lawsuit, Defendants have agreed to obtain permit coverage under New York's Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity.

I have attached written confirmation from the proposed funding recipient stating that it (1) will spend any monies received under the settlement agreement for the purposes specified in the agreement; (2) will not use any money received under the settlement agreement for political lobbying activities; and (3) will submit a report on how the funds were spent.

By submitting this proposed stipulation of settlement, counsel for Plaintiff asks the United States to promptly review the agreement and, if it does not object to dismissal of this action, to so notify the Court.

If you have any questions or concerns regarding this matter, please contact me.

Very truly yours,

s/Mike DiGiulio
Super Law Group, LLC
180 Maiden Lane, Suite 603
New York, NY 10038
(212) 242-2355
Mike@superlawgroup.com
Attorney for Plaintiff

cc:

Scott Pruitt, Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
(via certified mail)

Peter D. Lopez, Region 2 Administrator
Environmental Protection Agency
290 Broadway
New York, NY 10007-1866
(via regular mail)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RARITAN BAYKEEPER, INC., (d/b/a/ NY/NJ Baykeeper),	:
	:
Plaintiff,	:
	:
v.	: No. 17-cv-5065 (DLI) (PK)
	:
ALMAR SUPPLIES, INC.; BML CONSULTING, LLC; and ROSSANA BORTONE,	: STIPULATION OF
	: SETTLEMENT & PROPOSED
Defendants.	: ORDER OF DISMISSAL
-----	:
	:
	X

WHEREAS, Plaintiff Raritan Baykeeper, Inc. ("Baykeeper") is a not-for-profit environmental organization organized under the laws of the state of New Jersey.

WHEREAS, Defendants Almar Supplies, Inc. is a corporation organized under the laws of the state of New York ("Almar").

WHEREAS BML Consulting, LLC is a limited liability company organized under the laws of the state of New York ("BML").

WHEREAS Rossana Bortone is a resident of New York ("Bartone").

WHEREAS, Baykeeper alleged that the Defendants participate in the ownership and operation of a land transportation and trucking facility located at 248-22 Brookville Boulevard, Queens, New York 11422 ("Facility") and that the Facility discharged polluted stormwater runoff into waters of the United States, namely Jamaica Bay.

WHEREAS, Baykeeper sent a notice of intent to sue Almar ("Notice Letter") on May 3, 2017, alleging violations of 33 U.S.C. §§ 1311(a) and 1342 of the Clean Water Act ("CWA") seeking declaratory and injunctive relief, civil penalties, and reasonable attorneys' fees and costs, with respect to the Facility (the "Claims").

WHEREAS, Baykeeper filed this action on August 28, 2017, alleging violations of 33 U.S.C. §§ 1311(a) and 1342 of the Clean Water Act ("CWA") seeking declaratory and injunctive relief, civil penalties, and reasonable attorneys' fees and costs.

WHEREAS, Plaintiff alleges that jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question), and 33 U.S.C. § 1365(a) (Clean Water Act jurisdiction).

WHEREAS, Defendants will prepare a Stormwater Pollution Prevention Plan ("SWPPP").

WHEREAS, Defendants installed trench drains at the Facility's points of ingress and egress that connect to the Facility's water retention system.

WHEREAS, without any concession or admission by Defendants that they have violated the Clean Water Act, or any concession or admission by Baykeeper that Defendants' implementation of the measures listed above will prevent all discharge of polluted stormwater or will assure compliance with the terms and conditions of the *SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity*, Permit No. GP-0-i7-004 ("General Permit"), Baykeeper and Defendants (collectively, "the Parties" or individually "Party") agree that it is in their mutual interest to resolve this matter without the taking of evidence or findings of fact or law, and the Parties would like to avoid prolonged and costly litigation.

WHEREAS, this Stipulation shall be submitted to the United States Department of Justice and the United States Environmental Protection Agency ("EPA") for the 45-day statutory review period, pursuant to 33 U.S.C. § 1365(c).

NOW, THEREFORE, without the trial of any issue of fact or law, without the admission by Defendants of any of the facts or violations alleged in the Complaint, upon consent of the Parties, and upon consideration of the mutual promises contained herein,

IT IS HEREBY STIPULATED AND AGREED, by and between the parties herein and their respective counsel that the above-titled action ("Proceeding") is settled, and Plaintiff shall request that the Court order dismissal of the action after the above-mentioned review by the United States, upon the following terms and conditions:

1. Plaintiff hereby withdraws and discontinues, without prejudice and without costs or attorneys' fees, all claims asserted by Plaintiff as against Defendant Rossana Bortone ("Bortone") in the Proceeding.
2. Defendant Almar shall prepare a SWPPP and submit to the New York State Department of Environmental Conservation ("DEC") a Notice of Intent to seek coverage under the General Permit by March 30, 2018. If DEC identifies a substantial defect or insufficiency in the Notice of Intent, Defendants will revise and resubmit their Notice of Intent until DEC finds the Notice of Intent adequate and authorizes coverage under the General Permit.
3. Defendant Almar shall operate the Facility in compliance with their SWPPP and the applicable requirements of the Clean Water Act.
4. Defendant Almar shall pay the sum of two-thousand five hundred dollars (\$2,500) in the form of a certified bank check to Natural Areas Conservancy, for use on projects relating

to the reduction, mitigation, and/or remediation of the effects of stormwater pollution or environmental restoration of, or other benefit to the Jamaica Bay watershed. The payment has been placed in escrow with the Defendant's attorney and will be transferred to Natural Areas Conservancy no later than the 7th day after the date upon which the Court enters this Stipulation. Defendant Almar shall notify Baykeeper in writing concurrently when the payment is made and provide a copy of the check. None of this payment shall be disbursed to Baykeeper.

5. Defendant Almar shall pay a sum of ten thousand dollars (\$10,000) as full and complete satisfaction of Baykeeper's claims for attorneys' fees and costs incurred to date, including investigative and expert costs. The check shall be payable to "Super Law Group, LLC". The payment has been placed in escrow with the Defendant's attorney and will be transferred to Riverkeeper's attorney no later than the 7th day after the date upon which the Court enters this Stipulation. The Payment will be deposited in Super Law Group's IOLA Trust Account for the benefit of Baykeeper.

6. Upon Court approval and entry of this Stipulation, Baykeeper covenants not to sue and releases Defendants (including their representatives, assigns, agents, employees, officers, attorneys and consultants) from any and all claims, causes of action, or liability under Section 505 of the Clean Water Act, 33 U.S.C. § 1365, for damages, penalties, fines, injunctive relief, or any other claim or relief (i) relating to or resulting from noncompliance with the Clean Water Act occurring prior to the Effective Date, and (ii) for any past stormwater violations of the Clean Water Act at the Facility alleged, or that could have been alleged in the Complaint. This Paragraph does not constitute a waiver or release of any claims relating to the enforcement of this Stipulation.

7. Defendants release and discharge Baykeeper and its representatives, assigns, agents, employees, officers, attorneys and consultants, including those who have held positions in the past, from any and all claims, liability, demands, penalties, costs, and causes of action of every nature which concern or are connected with this Proceeding.

7. Baykeeper does not waive its right to bring a future action for injunctive or declaratory relief, penalties, and attorneys' fees and costs based on stormwater discharges that occur after the date upon which the Court enters this Stipulation.

9. Baykeeper does not by consent to this Agreement warrant or aver in any manner that Defendants' compliance with this Agreement shall constitute or result in compliance with federal or state law or regulation, except to the extent such suggested or proposed compliance is described herein. Nothing in this Agreement shall be construed to affect or limit in any way the obligations of Defendant to comply with all federal, state, and local laws and regulations governing any activity required by this Agreement, except to the extent such suggested or proposed compliance is described herein.

10. This Stipulation constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written, among the Parties.

11. Any notice, demand, copies of documents and other communications required to be made under the provisions of this Stipulation (collectively, "Notices") by any Party hereto shall be effective only if in writing and (a) personally served, (b) mailed by United States registered or certified mail, return receipt requested, postage prepaid, or (c) sent by a nationally recognized courier service (i.e., Federal Express), to be confirmed in writing by such courier. Notices shall be directed to the Parties at their respective addresses set forth below. Notices given in the foregoing manner shall be deemed given (a) when actually received or refused by the party to whom sent if delivered by courier, or (b) if mailed, on the day of actual delivery as shown by the addressee's registered or certified mail receipt or at the expiration of three (3) business days after the date of mailing, whichever first occurs.

Notices for Baykeeper shall be sent to:

Michael DiGiulio
Super Law Group, LLC
180 Maiden Lane, Suite 603
New York, NY 10038
Attorney for Baykeeper

Notices sent to the individual listed above at the address listed above shall be deemed as notice to Baykeeper.

Notice to Defendant Almar shall be sent to:

Almar Supplies, Inc.
248-22 Brookville Blvd.
Rosedale, NY 11422

With a copy that shall not constitute notice to:

Sullivan PC
7 East 20th Street
New York, NY 10003

Notice to Defendant BML shall be sent to:

BML Consulting LLC
248-22 Brookville Blvd.
Rosedale, NY 11422

With a copy that shall not constitute notice to:

Sullivan PC
7 East 20th Street
New York, NY 10003

Notice to Defendant Bortone shall be sent to:

Rossana Bortone
248-22 Brookville Blvd.
Rosedale, NY 11422

With a copy that shall not constitute notice to:
Sullivan PC
7 East 20th Street
New York, NY 10003

Notices sent to the individual listed above at the address listed above shall be deemed as notice to all Defendants.

12. Each person signing this Stipulation represents and warrants that s/he has been duly authorized to enter into this Stipulation by the Party on whose behalf it is indicated that the person is signing.

13. This Stipulation shall be binding upon and inure to the benefit of the Parties and their respective representatives, heirs, executors, administrators, successors, officers, directors, agents, attorneys, employees and permitted assigns.

14. This Stipulation may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Stipulation. Telecopied, scanned (.pdf), and/or facsimiled copies of original signature shall be deemed to be originally executed counterparts of this Stipulation. Copies of the original Stipulation, whether transmitted by facsimile or other means, shall be effective.

15. In the event that any of the provisions of this Stipulation are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

16. Defendants Almar Supplies, Inc. and BML Consulting LLC are jointly and severally liable for all payments required under this Stipulation.

Dated: 3/12/18

Almar Supplies, Inc.

By: Rossana Burton

Title: Pres

Dated: 3/12/18

BML Consulting, LLC.

By: Rosane Burton
Title: Member

Dated: 3/13/18

Raritan Baykeeper, Inc. (d/b/a NY/NJ Baykeeper)

By: Gregory C. Remaud
Title: Acting Executive Director

ENTERED and DATED this ____ day of _____, 2018

Honorable Peggy Kuo
United States Magistrate Judge



February 22, 2018

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 4390
Ben Franklin Station
Washington, D.C. 20044-4390

Re: Proposed Consent Decree, *Raritan Baykeeper, Inc. v. Almar Supplies, Inc., et al.*, 1:17-cv-5065

Dear Citizen Suit Coordinator:

The Natural Areas Conservancy ("NAC") is a 501c3 nonprofit organization. The tax identification number of our fiscal sponsor, the City Parks Foundation, is 13-3561657. Created in 2012, the NAC is a non-profit organization devoted to restoring and conserving New York City's forests and wetlands for biodiversity and the health and resilience of our city. Working in close partnership with the NYC Department of Parks and Recreation (NYC Parks), the NAC is the first park conservancy dedicated to all of New York City's natural lands and works in over 50 parks.

NAC is named as the Environmental Benefit Payment ("EBP") recipient of \$2,500 for use on projects relating to the reduction, mitigation, and/or remediation of the effects of stormwater pollution or environmental restoration of, or other benefit to the Jamaica Bay watershed. NAC will use this funding to support activities that benefit the Jamaica Bay and its connecting waterways. Currently, we plan to use the EBP funding to advance the following key area of activity:

Wetlands Restoration: Michaelis-Bayswater Park is located on the southeastern coast of Jamaica Bay at the southerly tip of Norton Basin. It is a 40 acre park bordered by Dwight Avenue to the north, Bay 32nd Street to the east, and Beach Channel Drive, Beach 35th Street, and Norton Avenue to the south. The section of the park north of an inlet of Jamaica Bay features open space and recreational amenities including barbecuing areas, playgrounds, baseball fields, basketball, handball, and tennis courts, and a comfort station. South of the inlet, directly north of Norton Avenue, the area is less hospitable to visitors. Degraded wetlands are present and littered with debris from illegal dumping and remnants of former infrastructure.

The Michaelis-Bayswater Park South Salt Marsh Restoration project proposes to restore salt marsh along the southern part of the shoreline of Michaelis-Bayswater Park in Far Rockaway, Queens. The project will include removing a substantial amount of concrete and asphalt rubble currently on the site, removing invasive plant species, minimal grading and placement of clean fill to expand and improve salt marsh habitat (target elevations ranging from 3.0 feet for low marsh up to 5.0 feet for high marsh/upland transition), planting of native low marsh and high marsh species, and providing continued informal public access in the form of a natural surface trail.

NAC will manage and oversee the funding received through this Consent Decree so that the funds will serve solely to fulfill the purpose of the Consent Decree. No portion of the funds received from this settlement will be awarded to Raritan Baykeeper, Inc., or other parties to the agreement.

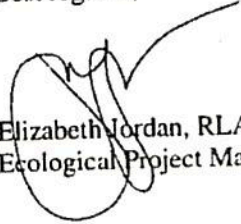


Nor will any portion of the funds be used for lobbying or other political activities. Once these funds are received and put to use for the benefit of Jamaica Bay, and its connecting waterways, NAC will submit a letter describing how the funds were spent.

We are grateful to be considered as stewards of the funds from this consent decree, and are excited to put this funding to work immediately for the benefit of New York's waterways and surrounding shoreline. I am happy to provide additional details or documentation in support of any of the above programs.

If you have any questions, please do not hesitate to contact me at 212-360-1454.

Best regards,



Elizabeth Jordan, RLA
Ecological Project Manager

